

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-x

CLINBERTHA HERCULES, ON BEHALF OF
HERSELF AND HER INFANT CHILDREN, AN.J.
and AL.J.,

STIPULATION OF
SETTLEMENT AND ORDER OF
DISMISSAL

121-HOTLINE

Plaintiffs,

11-CV-2557 (WFK) (LB)

-against-

CITY OF NEW YORK, KINGS COUNTY
DISTRICT ATTORNEY DETECTIVE
INVESTIGATOR WILLIAM PETTIE #752,
DETECTIVE INVESTIGATOR JOHN BEALE,
DETECTIVE INVESTIGATOR MURPHY AND
JOHN DOE POLICE OFFICER #1,

Defendants.

-x

WHEREAS, plaintiffs commenced this action by filing a complaint on or about May 26, 2011, alleging that the defendants violated plaintiffs' federal civil and state common law rights; and

WHEREAS, defendants City of New York and Detective Investigator William Pettie have denied any and all liability arising out of plaintiffs' allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS, plaintiffs have authorized their counsel to settle this matter on the terms set forth below; and

WHEREAS, plaintiff An. J. is an infant who brings this lawsuit by his/her mother, Clinbertha Hercules; and

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
2012 MAR 21
FILED
CLERK
1:
2

WHEREAS, on or about March 8, 2012, this Court approved plaintiffs' motion for an infant compromise; and

WHEREAS, plaintiff Al. J. is an infant who brings this lawsuit by his/her mother, Clinbertha Hercules; and

WHEREAS, on or about March 8, 2012, this Court approved plaintiffs' motion for an infant compromise;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. Defendant City of New York hereby agrees to pay plaintiff Clinbertha Hercules, the sum of Five Thousand (\$5,000.00) Dollars; plaintiff Clinbertha Hercules, as mother of An. J., the sum of Five Hundred (\$500.00) Dollars and plaintiff Clinbertha Hercules, as mother of Al. J., the sum of Five Hundred (\$500.00) Dollars in full satisfaction of all claims, including claims for costs, expenses and attorneys' fees. In consideration for the payment of these sums, plaintiffs agree to dismissal of all the claims against the defendants and to release the defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiffs' civil rights, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiffs each shall execute and deliver to defendant City of New York's attorney all documents necessary to effect this settlement, including, without limitation, a

General Release based on the terms of paragraph 2 above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, plaintiffs shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

4. Settlement of this action is conditioned on compliance with provisions set forth in Rule 83.2(a) of the Local Civil Rules of this Court ("Settlement of Actions by or on Behalf of Infants or Incompetents, Wrongful Death Actions, and Conscious Pain and Suffering Actions") and Rule 1207 et seq. of the Civil Practice Laws and Rules for the State of New York, to the extent applicable, and plaintiff's counsel will submit to the Court whatever documents are necessary for an infant compromise order.

5. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

6. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

7. Plaintiffs agree to hold harmless defendants regarding any liens or past and/or future Medicare payments, presently known or unknown, in connection with this matter.

If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

8. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
March 21, 2012

Stoll, Glickman, & Bellina LLP
Attorneys for Plaintiffs
475 Atlantic Ave., Fl.3
Brooklyn, NY 11217
718-852-4491

By: Nicole Bellina
Nicole Bellina
Attorney for Plaintiffs

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants City of New York
and Detective Investigator William Pettie
100 Church Street, Rm. 3-188
New York, New York 10007

By: Morgan D. Kunz 3/20/12
Erin Farrell MORGAN D. KUNZ
Special Assistant Corporation Counsel

SO ORDERED:

s/WFK

Dated: New York, New York
March 21, 2012

HON. WILLIAM F. KUNZ, II
UNITED STATES MAGISTRATE JUDGE

DISTRICT JUDGE